

DETAILED ACTION

1. This Office action is in response to the Interview conducted on 3/6/09. The applicant's arguments filed on 11/20/08 regarding the Jacoby reference is persuasive and the rejections have been withdrawn. However, a new grounds of rejections is provided below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-16 and 19-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0204740 to Weiser in view of US 2,798,492 to Barnes et al.

Weiser discloses a two-component device for closing a laceration or incision including a 1st component –1a with adhesive on the back surface; a 2nd component 1b also with an adhesive backed surface; connecting members 5a,b; and adhesive on the top of 1a,b or the bottom of 5a,b attaches the connecting members to the anchoring members. The connection of the connecting members to the anchoring members forming two components-a bridging portion extending over the area between adjacent surfaces of the two anchoring members and attached portions-the part actually adhered to the top surface of 1a,b. The exposed adhesive portions are covered by release liners. The very ends of the connecting members would constitute the claimed pulling elements. The different elements and the release liners are all coded with either colors or printed numbers. See paragraphs 17,18 and 46, along with Figs. 5-7 and 10.

Weiser is silent with regards to the average width of the bridging portions being less than that of the attached portions. Instead, Weiser discloses bridging portions having the same width as the attached portions

However, providing a wound closure device with bridging portions having an average width less than an attached portion is well known in the art, as shown in Fig. 2 and 5 of Barnes. Thus, Barnes discloses a bridging/attached portion arrangement that is an equivalent structure known in the art.

Therefore, because these two bridging/attached portions arrangement were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the bridging/attached portion arrangement of Jacoby for the bridging/attached portion arrangement of Weiser. Furthermore, it has been held that a simple substitution for one known element for another will be obvious to one of ordinary skill in the art since the substitution will yield predictable results. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007).

It is further noted that having an attached portion with a wider width than the bridging portion provides more surface area contact for the device against the skin. Also, having a bridging portion with a width less than the attached portion inherently provides greater flexibility for the device.

6. Claims 17 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiser in view of Barnes et al., as applied to the rejections above, and in further view of US 5,263,970 to Preller.

The modified device of Weiser makes obvious the invention as claimed with the exception of the pull bar. Preller discloses that it was known to provide similar articles with pull bars-28. It would have been obvious to have provided Weiser with pull bars in order to produce a substantial pulling element for applying traction.

7. Claims 18 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiser in view of Barnes et al., as applied to the rejections above, and in further view of US 5,979,450 to Baker.

The modified device of Weiser makes obvious the invention as claimed with the exception of the reinforced wound edge bar. Baker discloses that it was known to provide such (22) on a drape adhesively attached to skin. It would have been obvious to have provided Weiser with such a reinforcement in order to reduce the possibility of wrinkling of the sheets adhered to the skin.

Terminal Disclaimer

8. The terminal disclaimers filed on 11/20/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patents granted on applications 10625936, 10625937, 10626040 and 10626785 have been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

9. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571)272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3773

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darwin P. Erez/
Primary Examiner, Art Unit 3773